THE HIGH COURT OF UTTARANCAL AT NAINITAL

Writ Petition (M/S) No. 1318 of 2001.
(Old CMWP No. 50935 of 1999)

M/s Mehta Bishan Das and Associates,
10/80, Gali No.4. Rampur Road, Haldwani,
District Nainital, through its attorney Sri Dev Raj Verma.
…….. **Petitioner.**

Vs.

1. State of U.P. through Collector, Nainital.
2. The Commissioner Kumaon Division, Nainital.
3. The Additional Collector, Finance & Revenue, Nainital.

……..**Respondents.**

Sri Lalit Belwal, learned counsel for the petitioner.
Sri Bhupender Singh, Learned Standing Counsel for the respondents.

Dated July 25, 2006
P.C.: Hon'ble B.S. Verma, J.

By means of this writ petition, the petitioner has challenged the orders dated 11-8-1999 (Annexure No.1) passed by the respondent no.2 as well as order dated 31.12.1998 passed by the respondent no.3 under the provisions of the Indian Stamps Act. By the order dated 31-12-1998, the Additional District Magistrate (Finance & Revenue) had directed recovery of deficit stamp duly to be payable by the petitioner and in default recovery was to be made as arrears of land revenue form the petitioner.

Relevant facts given rise to the writ petition are that the petitioner is a Firm, which purchased certain land and the sale deed was registered on 28-5-1994 and executed by Sri Bhawani Singh vide sale deed no. 1154 of 1994. During the course of inspection made by the Board of Revenue between 8th and 12th of July 1996, it was found that stamp duly paid on the instrument executed was insufficient, therefore, the revenue authorities were directed to recover the deficit stamp duty from the purchaser of the land on the ground that the

purchaser firm had purchased it for commercial purpose, hence the purchase was liable to pay the deficit stamp duty. Notice was issued to the petitioner and *Tahsildar* concerned made spot inspection and submitted inspection report dated 14-2-98 stating therein that the land in question was not being used for residential purpose. The O.P.-petitioner resisted the case by filing objection and asserted that the notice issued to him was illegal. It was said that the petitioner had paid more than sufficient stamp duty as fixed by the Collector Nainital.

The Additional District Magistrate-respondent no.3 after hearing both the parties and considering the evidence on record ultimately passed by the impugned order as mentioned above. Aggrieved, the O.P.-petitioner went up in revision before the Commissioner Kumaun Region. The Revisional Court did not find favour with the contention of the petitioner and ultimately dismissed the revision preferred by the petitioner vide his order dated 11-8-1999 and upheld the order under revision, which gave rise to the present writ petition.

In course of the argument, learned counsel for the petitioner invited attention of the Court to the order dated 6-10-2005 passed in Writ petition No. 1319 (M/S) of 2005, M/s Mehta Bishan Das and Associates Vs. State of U.P. and two others, and submitted that the present writ petition is based on the same footing as that of the decided case. It was referred that this Court has already allowed Writ Petition No. 1320 of 2001 between the same parties on 24-7-2006 in terms of the order dated 6-10-2005 aforesaid. Learned Standing counsel has fairly conceded to this fact.

In the order the order dated 6-10-2005 passed in Writ Petition No. 1319 of 2005 (M/S), the controversy involved in the writ petition has already been resolved by this Court and the present writ petition too is also squarely covered by the Order of this Court aforesaid wherein it was held that the petitioner had paid sufficient stamp duty at the time of execution of sale deeds and notice issued

under Section 47-A of the Indian Stamp Act was discharged. In the facts and circumstances of the case, this writ petition deserves to be allowed in the same terms.

Accordingly, the petition is allowed on merit in terms of the order dated 6-10-2005 passed by this Court in WPMS No. 1319 of 2001, M/s Mehta Bishan Das and Associates V. State of U.P. and others. It is held that the petitioner is not guilty of paying insufficient stamp duty, therefore, the notice issued to the petitioner under Section 47-A of the Stamps Act is discharged. Amount deposited, if any, in compliance of Court's order shall be refunded to the petitioner. No order as to costs.

(B. S. Verma, J.)

RCP